

**FILED**

**MAY 22 2003**

**CATHY A. CATTERSON**

**U.S. COURT OF APPEALS**

CGU/Hawkeye Sec. Ins. Co. v. Oasis Las Vegas Motor Coach Park, No. 02-15401

GRABER, Circuit Judge, dissenting:

I respectfully dissent.

In my view, Ready Mix was a supplier and deliverer of materials, not a "subcontractor." The fact that a materialman supplies a product that is blended to specifications does not turn the materialman into a subcontractor. Simply put, a company that mixes batches of concrete and dumps them at the work sites is a supplier of materials and is not performing enough of the construction contract to be a "subcontractor."

The facts on which the district court relied are relevant to this question, see, e.g., United States v. Aetna Cas. & Sur. Co., 981 F.2d 448 (9th Cir. 1992), and I agree with its analysis. Therefore, I would affirm.